



**Testimony for the Senate Finance Committee Hearing on Medicare's  
Power Mobility Benefit**

**April 28, 2004**

**Submitted by the ITEM Coalition**

This testimony is being submitted on behalf of the ITEM Coalition, which is an acronym for Independence Through Enhancement of Medicare and Medicaid. The ITEM Coalition was formed in 2003, and its over 70 member organizations include a diverse set of disability organizations, aging organizations, other consumer groups, labor organizations, voluntary health associations, and non-profit provider associations. The ITEM Coalition's purpose is to raise awareness and build support for policies that will improve access to assistive devices, technologies and related services for people of all ages with disabilities and chronic conditions.

Access to both manual and power operated mobility devices is critical to a large number of Medicare beneficiaries, but the unmet assistive device needs of this population does not end with wheelchairs and power operated vehicles (POVs). From coverage for hearing aids to augmentative communication devices (AACs) to advanced artificial limbs to screen readers for people with vision impairments, the Coalition's mission is a broad one with implications for virtually every person with a disability who relies on assistive devices to be healthy, functional and independent.

We would like to thank Chairman Grassley, Ranking Member Baucus, and the Finance Committee for holding this hearing and bringing attention to the important debate over Medicare's power mobility benefit. We would also like to thank Chairman Grassley for his commitment to this issue and his powerful February 24, 2004 letter to the Centers for Medicare and Medicaid (CMS) Acting Administrator Dennis G. Smith. The letter restated Chairman Grassley's commitment to fighting fraud in the Medicare wheelchair benefit but also raised important questions challenging CMS' December 2003 Power Wheelchair "Policy Clarification." The ITEM Coalition believes Chairman Grassley's letter was instrumental in prompting CMS to subsequently retract the Power Wheelchair Policy Clarification on March 18, 2004. This retraction was consistent with the ITEM Coalition's request that CMS rescind this policy and engage in a dialogue with interested stakeholders when designing more appropriate wheelchair coverage criteria.

The ITEM Coalition fully understands the need to fight fraud in the Medicare program and fully supports aggressive government efforts to rid the program of fraudulent activity. Every dollar spent by Medicare through fraud is a dollar not spent meeting the assistive device needs of Medicare beneficiaries. However, the ITEM Coalition believes that the issuance and subsequent retraction of the Power Wheelchair Policy Clarification has exposed both outdated coverage policy and widespread confusion that exists under the Medicare wheelchair benefit. It is our hope that this hearing will lead to an objective examination of the current Medicare wheelchair benefit and a modification of coverage policies that will enhance this benefit for Medicare beneficiaries with disabilities of all ages.

### **Background**

In December of 2003, as part of "Operation Wheeler Dealer," CMS issued a "Policy Clarification" on power wheelchair coverage. While the Clarification did not technically mandate new coverage criteria, it limited coverage to only those beneficiaries who were confined to a bed or chair constituted, representing a tightening of Medicare coverage policy that for several years in practice permitted wheelchair access to any beneficiary who needed a mobility device to move about his or her residence. In doing so, the Clarification highlighted what the ITEM Coalition believes are overly restrictive and confusing regulations that continue to this day to be detrimental to the health and functionality of many Medicare beneficiaries with mobility impairments.

Following two "Listening Sessions" and a great deal of advocacy from consumer groups, providers, and other stakeholders, CMS and the Durable Medical Equipment Regional Carrier ("DMERC") Medical Directors retracted the Clarification in its entirety, effective March 18, 2004. This retraction was requested by the ITEM Coalition, along with many others, and CMS deserves credit for changing course to address stakeholder concerns. However, retraction of the Policy Clarification has failed to clarify or improve Medicare's coverage criteria for power and manual wheelchairs. The extensive debate surrounding this issue over the past five months has exposed deeply rooted problems, including seriously outdated coverage policies, inconsistent interpretations of federal policy, and widespread confusion. Thus, CMS's assertion that these

benefits would be accessible to beneficiaries in the future using the standards in place prior to the December issuance of the Policy Clarification is not reassuring.

### **Medicare's Coverage Criteria**

Medicare's coverage benefit for power wheelchairs deserves serious attention, debate, and revision. The benefit's confusing, arbitrary and archaic verbiage must be updated to reflect the undisputable value, potential and productivity of people with disabilities in society. More specifically, Medicare regulations only provide access to mobility devices if needed for use "in the home" or for those who are "bed or chair confined," therefore preventing beneficiaries from obtaining access to needed mobility devices.

#### ***The "In the Home" Criterion***

The root of the Medicare wheelchair coverage policy debate lies in CMS's reliance on the "in the home" criterion which artificially and arbitrarily limits coverage. This regulation states that Medicare will only provide power mobility for use within the four walls of one's home and not if one needs it to fully participate in work, school, and the community outside of the home. This criterion completely fails to recognize the real needs of individuals with mobility impairments and equates to the devaluation of the worth of a person with a disability. This is an antiquated restriction reminiscent of a time when people in wheelchairs were not expected to leave the home and participate in society. Independent living and community participation are now the benchmarks of a fully functional, healthy person with a mobility impairment, but the in-the-home standard has failed to keep pace with this new reality.

#### ***"Bed or Chair Confined"***

The term "bed or chair confined" is another outdated regulatory standard that, in the ITEM Coalition's view, must be revisited because it fails to ensure that beneficiaries who can get out of bed but have limited mobility can obtain access to a wheelchair, scooter or similar device. Informal CMS/DMERC interpretations throughout the years had extended coverage to individuals who were not strictly bed or chair confined but who were still in genuine need of wheeled mobility. In light of the events of the past few months, the ITEM Coalition's members

can no longer rely on informal understandings about wheelchair coverage. The ITEM Coalition, therefore, would like to work with this Committee, CMS, and others to modernize the “bed or chair confined” standard by modifying the regulations. The need to revisit the Medicare regulations addressing wheelchair coverage was made abundantly clear by the events of the past several months.

***“Ambulatory” and “Non-ambulatory”***

The December 2003 Policy Clarification attempted to restate the concept of when an individual was considered “non-ambulatory” for purposes of access to Medicare wheelchair coverage. The Policy Clarification asserted that it was not changing coverage policy in any respect. But at least one DMERC interpreted this standard as denying coverage for anyone who could walk more than one or two steps with or without assistance from a cane or walker. The retraction of the Policy Clarification stated that the coverage rules prior to the issuance of the Policy Clarification currently apply and that no change to the pre-December rules has occurred.

This means, according to these statements, that Medicare beneficiaries may still be denied mobility devices if they are able to walk more than one or two steps without the assistance of a cane or walker. It also means that in restating coverage policy for the future, CMS gave virtually no consideration to the serious concerns raised by the ITEM Coalition and other organizations such as conditions with waxing and waning symptoms, the effect of fatigue throughout the day, and many other clinical issues. If this is true, the retraction of the Policy Clarification has had no effect whatsoever on Medicare beneficiaries’ access to mobility devices and the concern and confusion generated by the Policy Clarification will continue despite its retraction.

Furthermore, at least one DMERC has issued a written bulletin that states that there is no need at this time to define the terms “ambulatory” and “non-ambulatory,” claiming instead that “physicians and other clinicians have the knowledge to [prescribe wheelchairs] without being given specific instructions or catch phrases to use in their evaluation.” Given the confusion and controversy that has surrounded this issue over the past several months, and given the potential of fraud and abuse that overhangs this benefit category, the ITEM Coalition is concerned that this lack of guidance will have a chilling effect on prescriptions for wheeled mobility for

Medicare beneficiaries, unless additional thought and guidance regarding appropriate coverage criteria are promulgated.

### **Functionality and Independence: Coverage Goals**

Unveiled in February, 2001, the President's *New Freedom Initiative* (NFI) was intended to help Americans with disabilities by increasing access to assistive technologies, expanding educational opportunities, increasing the ability of Americans with disabilities to integrate into the workforce and promoting increased access into daily community life. In fact, the NFI listed Medicare's in-home restriction on mobility devices as a policy in need of review by the Department of Health and Human Services. The ITEM Coalition applauds these goals, but would prefer that more progress would have been made by now. Medicare's current benefit for power and manual wheelchairs directly contradicts that *New Freedom Initiative's* objectives as it fails to incorporate the basic rights of communal and societal integration, as well as functional improvement, into Medicare's coverage criteria. The NFI's intent is to expand opportunities for people with disabilities. Mobility device coverage policies that force individuals to remain home-bound and dependent must be reformed.

A comprehensive review of the coverage criteria for the wheelchair benefit category must include a discussion on the *value of functional improvement* in the medical necessity determination. Access to various types of mobility devices has a tremendous impact on the ability of an individual with a disability to be healthy, functional and independent. This includes functional improvement in *all* aspects of a person's life. Mobility devices that offer the greatest functional improvement are often labeled by Medicare as "not medically necessary," "convenience items," or "luxury items." These concepts, in our view, have long been in need of review and modification if the mobility device benefit is going to meet the current unmet need, as well as the future needs, of Medicare beneficiaries.

**Conclusion**


The Medicare program simply must do better in providing for the needs of beneficiaries with disabilities and other mobility impairments. While outright fraud must be prosecuted to the full extent under the law, Medicare's mobility device coverage policies must be the subject of comprehensive review and reform. Because Medicare is a guide for other health care coverage policies, its restrictions and out-of-date concepts have ripple effects throughout all federal health programs and private insurance plans. The time has come to modernize coverage policy in the Medicare mobility device benefit category to meet the current and future needs of individuals with disabilities and other mobility impairments. Between the unmet need that exists today and the advances in mobility technology that are breaking new ground in restoring function, the need for CMS to comprehensively address this benefit category has never been greater.

Thank you for your consideration of our views. If we can be of any assistance to the Finance Committee as these issues continue to be considered, please contact us at (202) 349-4260.

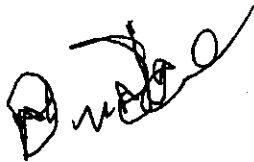
The ITEM Coalition Steering Committee,



Henry Claypool  
Advancing Independence:  
ITEM Coalition Steering Committee Member



Peter W. Thomas  
Consortium for Citizens with  
Disabilities Health Task Force  
ITEM Coalition Steering Committee Member



Paul W. Schroeder  
American Foundation for the Blind  
ITEM Coalition Steering Committee Member



Lee Page  
Paralyzed Veterans of America  
ITEM Coalition Steering Committee Member



*Independence Through  
Enhancement of  
Medicare and Medicaid*  
COALITION

**ITEM Coalition Members**

Adapted Physical Activity Council	American Occupational Therapy Association
Advancing Independence	American Physical Therapy Association
Advanced Medical Technology Association	American Speech-Language-Hearing Association
Alexander Graham Bell Association for the Deaf and Hard of Hearing	American Therapeutic Recreation Association
Alpha One	Amputee Coalition of America
American Academy of Audiology	Assistive Technology Industry Association
American Academy of Neurology	Association for Education and Rehabilitation of the Blind and Visually Impaired
American Academy of Physical Medicine and Rehabilitation	Association for Persons in Supported Employment
American Association for Homecare	Association of Tech Act Projects
American Association of People with Disabilities	Association of University Centers on Disabilities
American Association on Health and Disability	Blinded Veterans Association
American Congress of Community Support and Employment Services	Brain Injury Association of America
American Congress of Rehabilitation Medicine	Center for Disability Issues and Health Professionals
American Foundation for the Blind	Center for Independent Living Inc., Berkeley, California
American Medical Rehabilitation Providers Association	Center for Medicare Advocacy, Inc.
American Music Therapy Association	Christopher Reeve Paralysis Foundation
American Network of Community Options And Resources	Consortium of Developmental Disabilities Councils

Council of Citizens with Low Vision International	National Council on Independent Living
Council of State Administrators of Vocational Rehabilitation	National Family Caregivers Association
Disability Service Providers of America	National Multiple Sclerosis Society
Easter Seals	National Organization on Disability
Epilepsy Foundation	National Rehabilitation Hospital – Center for Health and Disability Research
Families USA	National Respite Coalition
Goodwill Industries International, Inc.	National Spinal Cord Injury Association
Helen Keller National Center	National Stroke Association
Inclusion Research Institute	National Vision Rehabilitation Cooperative
Long Island Center for Independent Living	NISH
Medicare Rights Center	Paralyzed Veterans of America
The Miami Project to Cure Paralysis	Research Institute for Independent Living
National Association for Home Care and Hospice	Rehabilitation Engineering and Assistive Technology Society of North America
National Association for the Advancement of Orthotics and Prosthetics	Self Help for Hard of Hearing People
National Association of Councils on Developmental Disabilities	Service Employees International Union
National Association of Protection and Advocacy Systems	Spina Bifida Association of America
National Association of Rehabilitation Research and Training Centers	The Arc of the United States
National Campaign for Hearing Health	Topeka Independent Living Resource Center
National Coalition for Disability Rights	United Cerebral Palsy Associations
	United Spinal Association